United Nations S/2004/979

Security Council

Distr.: General
21 December 2004

Original: English

Note by the President of the Security Council

I have the honour to transmit a letter dated 17 December 2004 from the Chairman of the Informal Working Group of the Security Council on General Issues of Sanctions addressed to the President of the Security Council (see annex).

04-65565 (E) 211204

Annex

Letter dated 17 December 2004 from the Chairman of the Informal Working Group of the Security Council on General Issues of Sanctions addressed to the President of the Security Council

You may recall that by a note by the President of the Security Council, dated 29 January 1999 (S/1999/92), the members of the Council adopted 20 practical proposals to be used to improve the work of sanctions committees in accordance with resolutions concerned.

The members of the Security Council also agreed to continue their consideration of ways to improve the work of the sanctions committees. Moreover, you may recall that in a subsequent note by its President, dated 17 April 2000 (S/2000/319), the Council authorized the establishment, on a temporary basis, of an informal working group of the Council to develop general recommendations on how to improve the effectiveness of United Nations sanctions. According to the above note, the informal working group should benefit from all available sanctions expertise, including being briefed, on a case-by-case basis, by appropriate experts. It should examine, inter alia, the following issues in all aspects with a view to improving the effectiveness of sanctions:

(a) Working methods of sanctions committees and inter-committee coordination;

(b) Capacity of the United Nations Secretariat;

(c) Coordination within the United Nations system and cooperation with regional and other international organizations;

(d) Design of sanctions resolutions, including the conditions for the maintaining/lifting of sanctions;

(e) Pre- and post-assessment reports and the ongoing evaluation of sanctions regimes;

(f) Monitoring and enforcement of sanctions;

(g) Unintended impacts of sanctions;

(h) Humanitarian exemptions;

(i) Targeted sanctions;

(j) Assisting Member States in implementing sanctions;

(k) Implementation of the recommendations of the note by the President of 29 January 1999 (S/1999/92).

Under the leadership of the first Chairman of the Informal Working Group of the Security Council on General Issues of Sanctions, Ambassador Anwarul Chowdhury (Bangladesh), the Working Group commenced discussions in May 2000 followed by more than 25 subsequent meetings. At many of these meetings, experts with different areas of expertise were invited to brief the Working Group on relevant issues. This dialogue resulted in a number of valuable and useful suggestions. Work commenced on a draft non-paper, entitled "Chairman's Proposed Outcome," which

attempted to identify ways in which the effectiveness of sanctions authorized by the Council might be improved.

Under the chairmanship of my predecessor, Ambassador Martin Belinga-Eboutou (Cameroon), the Working Group held several formal and informal meetings in order to continue the consideration of ways to improve the use of sanctions by the Security Council. Specific attention was paid to a number of pending issues, as identified by Ambassador Chowdhury in his report to the Security Council of 16 February 2001, on which consensus among members of the Working Group was not reached. In spite of all efforts, it was not possible to reach an overall agreement on these matters. Ambassador Eboutou briefed the Security Council accordingly on 18 December 2003, and to this effect the report of the Group was issued on 22 January 2004 (see S/2003/1197).

It is worthwhile to stress that since the establishment of the Working Group, the above referenced draft non-paper has undergone 10 major revisions in an attempt to reach consensus among the members of the Working Group on how best to improve the effectiveness of sanctions authorized by the Security Council. Disagreements among members concerning a very limited number of key principles, in particular the time-limitation and duration of sanctions, have prevented finalization of the document. The latest draft version of the "Chair-man's Proposed Outcome" (Rev.10) dated 26 September 2002, contains 65 recommendations elaborated by the Working Group in the process of implementation of its mandate. Interested parties may review the "Chair-man's Proposed Outcome" (Rev.10) on the Working Group's web site (located at: http://www.un.org/Docs/sc/committees/sanctions/index.html).

Most delegations favoured the continuation of the discussions of the Working Group based on the "Chairman's Proposed Outcome" (Rev.10) in order to take advantage of the results of the extensive work and negotiations that had taken place since the establishment of the Working Group in 2000.

At least one delegation was of the view that the draft non-paper is outdated, since, in the wake of events of 11 September 2001, it fails to address the Security Council's use of sanctions as a key policy tool in international efforts to combat the threat posed by global terrorism, particularly in the area of terrorism finance. Moreover, many of the recommendations contained in the draft non-paper have already been put into practice.

You may further recall that in the note by the President of the Security Council, dated 8 January 2004 (S/2004/5), the Council members agreed that I shall serve as Chairman of the Working Group for the period ending 31 December 2004. After a thorough analysis of the situation with the Secretariat, and in an attempt to transcend the deadlock, I engaged in extensive bilateral consultations with members of the Council and with delegations of those countries that have, by generating various reports and studies, contributed to discussions on sanctions reform, as well as with relevant academic institutions.

As a result, in 2004, the Working Group held three informal meetings to seek ways to advance its work. Among the key issues on which consensus has not been reached have been the duration of sanctions, the question whether sanctions should be, in principle, time-limited or not, the related issue of lifting sanctions and the way to address the concerns of third States adversely affected by sanctions. New

proposals have been developed by the Chairman in an attempt to address the main issues of divergence, and those proposals are still under consideration.

After thorough discussion and assessment of the practice of the Security Council in the use of sanctions, the Working Group came to the conclusion that many of the recommendations identified during its previous discussions and highlighted in the above outcome document, coupled with ideas advanced at the Interlaken, Bonn-Berlin and Stockholm processes, have resulted in tangible and concrete changes during the past several years. These changes have affected both the manner in which the Council now develops and authorizes sanctions regimes, as well as the day-to-day work of the Subsidiary Organs Branch of the Security Council.

In sections A through E below, I seek to bring to your attention a number of these improvements in order to underscore the important contributions already made by the Working Group, through its numerous prior discussions, towards enhancing the effectiveness of sanctions authorized by the Security Council.

A. Administration of sanctions and the work of sanctions committees of the Security Council

- Individual sanctions committees have begun to encourage dialogue between Member States and the committees, including through the participation of Member States in committee meetings;
- Individual sanctions committees have increasingly begun to seek reports from Member States, in particular from those located near the target State, on steps that they are taking to implement the measures imposed by the Security Council;
- Individual sanctions committees benefit from the support of monitoring expert bodies, which assist them in monitoring and assessing the implementation of sanctions and provide them with technical advice. These bodies also brief the committees and regularly submit reports. Many sanctions committees are also briefed by national experts, relevant international, regional and subregional organizations and United Nations agencies in areas related to sanctions;
- Certain sanctions committees, such as the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, have held public briefings to inform other States of the work of the committees and to advise them on committee procedures, for instance on the addition to and removal of names from lists maintained by the committees;
- Chairmen of sanctions committees have increased their efforts to coordinate working methods of their respective committees in order to improve the overall effectiveness of their work. Many sanctions committees have held informal joint meetings to explore possible areas for common action;
- Chairmen of sanctions committees have made a number of visits to the regions concerned and have continued to meet with representatives of individual Member States to explain the work of their respective committee and to inquire into what steps have been taken by the State visited to implement the

measures imposed by the Security Council and to identify needs of States for technical or any other assistance in implementation of the sanctions.

B. Work of the Subsidiary Organs Branch of the Security Council

- The Subsidiary Organs Branch of the Security Council has enhanced its capacity to provide more effective support to the existing Security Council sanctions committees in their administration of the sanctions regimes;
- The Branch has established a roster of outside experts who have been called upon to work for various monitoring expert bodies authorized by the Security Council in order to assist the sanctions committees with monitoring and assessing the implementation of sanctions and provide technical advice;
- The Branch has set up web sites providing access for States, as well as the public, to relevant sanctions committee documentation and information, as determined by each committee;
- The Branch has assisted specific sanctions committees and working groups in the development of a database to compile and coordinate information gathered by relevant monitoring bodies on reported sanctions violations as well as on steps being taken by Member States to implement the measures authorized by the Council.

C. Cooperation with relevant international, regional and subregional organizations

- Representatives of international organizations and agencies with expertise in sanctions compliance activities, such as Interpol, have begun to meet with specific sanctions committees, such as the Committee established pursuant to Security Council resolution 1267 (1999), to discuss ways in which Member States may improve the implementation of sanctions measures while not adversely affecting innocent individuals and untargeted entities. Relevant information is transmitted to the international organizations concerned.

D. Improving the design of sanctions regimes

- Recent Security Council resolutions authorizing the establishment of sanctions regimes have included language that clearly and carefully specifies the conditions to be met by the target State(s) before restrictive measures will be modified or removed;
- As situations change, such as in the case of Liberia, sanctions regimes have been modified and redefined based upon new legal bases, in order to reflect changed circumstances on the ground in relation to threats to international peace and security;
- In relevant cases, the Security Council has sought an assessment of the possible humanitarian impact of measures it has authorized, with a view to minimizing the unintended negative consequences of such measures;

- Current sanctions regimes authorized by the Security Council include exemption provisions authorizing individual committees to determine whether exemptions should be granted on the basis of medical, humanitarian or other considerations, such as the needs of peacekeeping operations;

- Arms embargoes often provide for exemptions for supplies of non-lethal military equipment intended solely for humanitarian and protective use or related purposes. The Security Council often requires prior notification of, or approval by, the relevant sanctions committee in relation to such supplies.

E. Improving the implementation of sanctions

- Sanctions committees, as well as the monitoring expert bodies assisting them, have begun to assess more extensively the written reports submitted by individual Member States concerning the steps they have taken to implement sanctions measures mandated by the Security Council;

- In the case of the Democratic Republic of the Congo, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) has been tasked by the Security Council, in conjunction with its other duties, to report on sanctions violations. In the case of Liberia, the Council has welcomed the readiness of the United Nations Mission in Liberia to assist the Liberia Sanctions Committee in monitoring, inter alia, the arms embargo;

- Various monitoring expert bodies have succeeded in collecting more information on the implementation of sanctions and have increasingly brought to the attention of the members of the Security Council and to other Member States specific sanctions violations and instances of non-compliance;

- Various assessment reports of different monitoring expert bodies include recommendations for improving the implementation of sanctions and their effectiveness as well as for mitigating their unintended impacts;

- Relevant international, regional and subregional organizations are encouraged to assist States that request assistance in the implementation of sanctions.

Mr. President, as is clear from the examples provided above, a wide range of tangible improvements in the design, implementation and administration of sanctions regimes have been prompted by the ideas and proposals discussed and considered by members of the Informal Working Group of the Security Council on General Issues of Sanctions.

Nevertheless, a number of issues concerning the Security Council's use of sanctions as a fundamental policy tool need further review and assessment by the members of the Working Group. New global threats to peace and security will continue to demand new and innovative policy responses by the Security Council.

Given the importance of the discussions among members of the Working Group in identifying and highlighting areas for improvement, the Security Council may wish to consider favourably an extension of the Working Group's mandate and to refine the Group's objectives in order that it may serve as a working-level forum for informal, interactive dialogue mandated to consider recommendations to improve the Council's evolving use of sanctions and to address ongoing threats to international peace and security. Issues, including those listed below, may be

addressed by the Working Group, including, as appropriate, with the consensus of the members, in an open dialogue with interested Member States, as well as with international, regional, intergovernmental and other relevant organizations:

- Improving cooperation between sanctions committees, monitoring bodies and regional organizations, as well as assessing the possibility of reporting by regional organizations as an alternative to the reporting by individual States;
- Duration and lifting of sanctions;
- Assessment of the unintended impact of sanctions and ways to assist affected untargeted States;
- Improving national implementation of sanctions;
- Enforcement of targeted sanctions, especially sanctions such as assets freezes or travel bans targeting individuals or entities;
- De-listing procedures in relation to the implementation of targeted sanctions and the legal consequences of de-listing;
- Secondary sanctions against States violating sanctions;
- Improving archives and databases in the Secretariat, including the roster of experts.

(*Signed*) Joël W. **Adechi**
Chairman of the Informal Working Group of the
Security Council on General Issues of Sanctions